IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2192 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KASIM BUNIYADALI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2192 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/05/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 15-1-2002 passed by the Police Commissioner, Ahmedabad City and he

has been branded as "dangerous person".

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that two criminal cases have been registered against the detenu at Vatva Police Station being C.R.No.I-503/2001 dated 30-11-2001 and C.R.No.II-3007/2002 dated 7-1-2002. He has also submitted that last offence registered against the detenu was on 7-1-2002 while the order of detention was passed on 15-1-2002 and hence, there is a delay in passing the impugned order. Drawing my attention towards page 18 of the compilation, which is the grounds of detention, he has contended that detenu was in judicial custody at the time of passing the detention order which aspect ought to have been considered by the authority while passing the detention order. In this connection, he has relied upon the case of Amritlal and Other Vs. Union Govt. Through Secy., Ministry of Finance and Others, AIR 2000 S.C. 3675 wherein it was held at Head note as under:

> "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (46 of 1988), S.3--Satisfaction of detaining authority--"Likelihood of detenu moving an application for bail"--not sufficient--It is different from "Likelihood to be released on bail"".

4. It seems that there is non-application of mind on the part of detaining authority in passing the detention

order as the detenu was in judicial custody when the order of detention was passed which aspect has not been considered by the authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 15-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Kasim Buniyadali Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Learned advocate for the petitioner assures before the bar that detenu will stay away from Ahmedabad for a priod of 15 days from the date of release. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

RADHAN/